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SUBJECT: BELARUSIAN CRIMINAL JUSTICE SYSTEM: COMEDY AND TRAGEDY

Summary

11. (SBU) Observations from the recent arrest and trial of an AmCit accused of financial crimes confirmed that the Belarusian criminal justice system remains a weak parody of a system based upon rule of law. This glimpse at the court system outside the public eye and highly politicized cases exposes deep-seated, systemic problems that ranged from the absurd to the outrageous. Reform of the criminal justice system, in particular the professionalism of judges and prosecutors, is yet another issue in the laundry list to be addressed by GOB authorities. End summary.

Consular access? What Vienna Convention?

12. (SBU) Post encountered problems from the outset as the Ministry of Foreign Affairs provided initial consular notification in February 2006 more than two weeks after the Department of Financial Investigations (DFI) of the Ministry of Internal Affairs detained the AmCit. The Ministry of Internal Affairs then told the Consular Section that the AmCit expressly did not want to meet with Emboffs. In reality, after spending a month in a detention facility before being released on USD 50,000 bail, the rather perturbed AmCit appeared at the Consular Section and expressed displeasure that Conoffs did not visit him during his detention.

13. (SBU) Unfortunately lightning did strike twice in this case when the DFI re-detained and then arrested and formally charged the AmCit in September 2006. Once again, the Belarusian authorities violated Vienna Consular Convention provisions for immediate consular access, using bureaucratic rigmarole to delay a visit by Conoffs until five days after the detention. This would become a familiar scenario as each subsequent request for consular access, although eventually granted, proved an intense battle of wills.

14. (SBU) The epitome of ignorance regarding Belarus' international treaty obligations occurred during Conoff's first interaction with the judge assigned to the case. In accordance with the Belarusian Criminal Code, the trial judge personally must approve visitation rights once a case is transferred to the court's jurisdiction. When presented with an Embassy diplomatic note requesting consular access, the presiding judge asked with all seriousness whether the purpose of the visit was moral support and whether the U.S. would grant such a request if a Belarusian Conoff wished to visit a Belarusian prisoner. The judge then grabbed the note and disappeared for 15 minutes, leaving Conoff to contemplate the 1994-vintage portrait of President Lukashenka hanging on the wall.

¶5. (SBU) When the judge returned in a huff, she informed Conoff that while she understood the importance of "some international documents," the Belarusian Criminal Code in most cases provides for visitation rights only after a verdict has been announced. [Note: The judge denied the AmCit's Belarusian wife visitation on these grounds. End note.] Nevertheless, the judge stated that she in general was inclined to grant the request, but that she could not accept the current diplomatic note because it omitted the Russian language silent letter "soft sign" from her last name. Conoff offered to correct the note by hand or send a new version by Embassy driver, but the judge rejected these options as showing disrespect to the court.

¶6. (SBU) As a result, the Consular Section turned to the MFA for assistance in shepherding this routine request for consular access through the courts and finally received permission to visit the Amcit two weeks later. One of our MFA counterparts candidly attributed the actions of the judge to "fear or incompetence" and shared his disbelief for her inflexibility by stating that "as far I know, even one of the greatest documents of all time, the U.S. Constitution, was edited by hand."

Ready, Action, Camera: Take Two!

¶7. (SBU) To the relief of the AmCit, who repeatedly told Conoff that he eagerly awaited his day in court, the judge finally convened a hearing on February 5, 2007, almost five months after the arrest and more than a month after the Department of Financial Investigations handed off the case to the Prosecutor's Office.

¶8. (SBU) This, however, proved to be the shortest of reprieves as it took less than an hour for the judge to declare a recess. Following the judge's heavily scripted excursion through the biographies of the defendant, the prosecutor made his opening statement -- or rather stumbled through his reading of eight pages of convoluted text. At this point, the judge abruptly halted the proceedings and adjourned to her chambers, soon to be joined for 30 minutes of ex parte discussions with the prosecutor as defense lawyers waited patiently in the hallway.

¶9. (SBU) The trial resumed after 90 minutes, but with the addition of two laypersons who the judge announced would serve as "people's assessors" of the case. The judge then stated that these new participants constituted a change to the composition of court, which in turn dictated starting over from scratch. This turn of events caused considerable angst, but did not save trial participants and observers from a second rendering of the prosecutor's rambling opening statement.

¶10. (SBU) The judge then announced that none of the 22 witnesses due to be called by the prosecutor and the defense had appeared for the trial, but that the court would endeavor to ensure that these individuals appeared after lunch. None of the trial participants seemed taken back by this proposal. As dictated by Belarusian court proceedings, the prosecutor then began questioning the defendant, but in what appeared to be an entirely haphazard manner. The questions either were entirely open-ended, such as "Tell the court what happened in November 2004," or leading -- "when you decided to defraud the bank, what actions did you take?" --, but did not elicit objections from defense counsel.

Going Through The Motions

¶11. (SBU) Just when it seemed that the trial would move forward at a reasonable pace, a series of illnesses struck the proceedings. The absence of one witness led to a three-week recess, and one day after the trial resumed, one of the people's assessors fainted in court, triggering another month-long delay.

¶12. (SBU) The court re-convened on March 21, 2007 for the fourth time since the trial began on February 5. Conoff attended the hearing at the request of the AmCit, who anticipated that closing arguments would be heard. While

waiting for the case to begin, Conoff spoke briefly with defense counsel, who just had emerged from chambers. They informed him that the presiding judge had informed them she planned to announce the verdict the following day at 5:00 pm. The judge then exited her office and spent the next 15 minutes walking the halls searching for the prosecutor, who had failed to appear in time for the hearing.

¶13. (SBU) Once the case finally got underway, the court subjected the participants to another of the vagaries of the Belarusian justice system - the requirement that all information solicited and collected during the course of the investigation and trial be read into the official record. Thankfully, this particular case was relatively minor in scale and therefore involved a mere nine volumes of documents, which the judge, demonstrating enviable stamina, managed to zip through in 50 minutes flat.

¶14. (SBU) When it came time for closing arguments, the prosecutor evidently decided to compensate for the judge's verbosity. His closing statement, in which he simply stated that the government proved its case without delving into unnecessary details, lasted less than three minutes. By contrast, the AmCit's local attorney put forth a spirited and fairly well-grounded defense.

¶15. (SBU) On March 23, the court sentenced the defendant to 5.5 years in prison, plus confiscation of assets, for crimes committed in violation of Article 210, Part 4 of the Criminal Code (theft through abuse of authority). Sentencing provisions called for between five and twelve years' imprisonment for this offense.

Comment

¶16. (SBU) Although we are not in a position to comment upon the guilt or innocence of the American defendant, observations from his trial expose fundamental weaknesses in the current state of the Belarusian criminal justice system. In a case stripped of serious political connotations, both the judiciary and law enforcement proved unwilling and perhaps unable to uphold basic tenets crucial to guaranteeing a fair trial. The lack of professionalism is yet another example of the many things that do not bode well for the future of rule of law in Belarus.

MOORE